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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

David Plastik,

Plaintiff,

v.

The Comedy Store,

Defendant.

Case No:

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff David Plastik (*“Plaintiff”*), by and through his undersigned counsel, for his Complaint against Defendant The Comedy Store (*“Defendant”*) states and alleges as follows:

INTRODUCTION

1. This action seeks to recover damages for copyright infringement.
2. Plaintiff herein creates photographic images and owns the rights to these images which Plaintiff licenses for various uses including online and print publications.

4. Defendant, without permission or authorization from Plaintiff actively copied, stored, and/or displayed Plaintiff's Photograph on the Website and engaged in this misconduct knowingly and in violation of the United States copyright laws.

5. Plaintiff David Plastik is an individual who is a citizen of the State of Nevada and maintains a principal place of residence in Clark County, Nevada.

6. Upon information and belief, Defendant The Comedy Store, is a California corporation in the State of California with a principal place of business at 8433 Sunset Blvd, West Hollywood in Los Angeles County, California.

7. This Court has subject matter jurisdiction over the federal copyright infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

8. This Court has personal jurisdiction over The Comedy Store because it maintains its principal place of business in California.

9. Venue is proper under 28 U.S.C. §1391(a)(2) because The Comedy Store does business in this Judicial District and/or because a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

FACTS COMMON TO ALL CLAIMS

10. Plaintiff is a professional photographer by trade who is the legal and rightful owner of the photographs which Plaintiff licenses to online and print publications.

11. Plaintiff has invested significant time and money in building Plaintiff's photograph portfolio.

12. Plaintiff has obtained active and valid copyright registrations from the United States Copyright Office (the "USCO") which cover many of Plaintiff's photographs while many others are the subject of pending copyright applications.

13. Plaintiff's photographs are original, creative works in which Plaintiff's own protectable copyright interests.

14. The Account is a popular and lucrative commercial enterprise.

15. The Account is monetized in that sells event tickets to the public and, upon information and belief, Defendant profits from these activities.

16. On January 8, 1990 Plaintiff authored a photograph of Charlie Sheen hanging out with the Rodney Dangerfield and Sam Kinison (the "*Photograph*"). A copy of the Photograph is attached hereto as Exhibit 1.

17. Plaintiff applied to the USCO to register the Photograph on April 2, 2018 under Application No. 1-6452706018.

18. The Photograph was registered by USCO on April 2, 2018 under

1 Registration No. VA 2-098-245.

2 19. On August 8, 2022 Plaintiff first observed the Photograph on the
3 Account in a post that was dated November 25, 2020. A copy of the screengrab
4 of the Account including the Photograph is attached hereto as Exhibit 2.
5

6 20. The Photograph was displayed at URL:
7
8 [https://www.facebook.com/TheComedyStore/photos/pb.1000506601916](https://www.facebook.com/TheComedyStore/photos/pb.100050660191653.-2207520000../10159179999777313/?type=3)
9 [53.-2207520000../10159179999777313/?type=3](https://www.facebook.com/TheComedyStore/photos/pb.100050660191653.-2207520000../10159179999777313/?type=3).

10 21. Without permission or authorization from Plaintiff, Defendant
11 volitionally selected, copied, stored and/or displayed Plaintiff copyright protected
12 Photograph as is set forth in Exhibit “1” on the Account.
13

14 22. Upon information and belief, the Photograph was copied, stored and
15 displayed without license or permission, thereby infringing on Plaintiff's
16 copyrights (hereinafter the “*Infringement*”).
17

18 23. The Infringement includes a URL (“*Uniform Resource Locator*”) for
19 a fixed tangible medium of expression that was sufficiently permanent or stable
20 to permit it to be communicated for a period of more than a transitory duration
21 and therefore constitutes a specific infringement. *17 U.S.C. §106(5); Perfect 10,*
22 *Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1160 (9th Cir. 2007).
23
24

25 24. The Infringement is an exact copy of the entirety of Plaintiff's
26 original image that was directly copied and stored by Defendant on the Account.
27
28

1 25. Upon information and belief, Defendant takes an active and
2 pervasive role in the content posted on its Account, including, but not limited to
3 copying, posting, selecting, commenting on and/or displaying images including
4 but not limited to Plaintiff's Photograph.
5

6 26. Upon information and belief, the Photograph was willfully and
7 volitionally posted to the Account by Defendant.
8

9 27. Upon information and belief, the Infringement were not posted at the
10 direction of a "user" as that term is defined in 17 U.S.C. §512(c).
11

12 28. Upon information and belief, Defendant engaged in the Infringement
13 knowingly and in violation of applicable United States Copyright Laws.
14

15 29. Upon information and belief, Defendant has the legal right and
16 ability to control and limit the infringing activities on its Account and exercised
17 and/or had the right and ability to exercise such right.
18

19 30. Upon information and belief, Defendant monitors the content on its
20 Account.
21

22 31. Upon information and belief, Defendant has received a financial
23 benefit directly attributable to the Infringement.
24

25 32. Upon information and belief, the Infringement increased traffic to
26 the Account and, in turn, caused Defendant to realize an increase in its advertising
27 revenues and/or merchandise sales.
28

1 33. Upon information and belief, a large number of people have viewed
2 the unlawful copies of the Photograph on the Account.

3
4 34. Upon information and belief, Defendant at all times had the ability
5 to stop the reproduction and display of Plaintiff's copyrighted material.

6 35. Defendant's use of the Photograph, if widespread, would harm
7 Plaintiff's potential market for the Photograph.

8
9 36. As a result of Defendant's misconduct, Plaintiff has been
10 substantially harmed.

11
12 **FIRST COUNT**
13 ***(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)***

14 37. Plaintiff repeats and incorporates by reference the allegations
15 contained in the preceding paragraphs, as though set forth in full herein.

16 38. The Photograph is an original, creative works in which Plaintiff owns
17 valid copyright properly registered with the United States Copyright Office.

18
19 39. Plaintiff has not licensed Defendant the right to use the Photograph
20 in any manner, nor has Plaintiff assigned any of its exclusive rights in the
21 copyrights to Defendant.

22
23 40. Without permission or authorization from Plaintiff and in willful
24 violation of Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and
25 illegally copied, stored, reproduced, distributed, adapted, and/or publicly
26 displayed works copyrighted by Plaintiff thereby violating one of Plaintiff's
27
28

1 exclusive rights in its copyrights.

2 41. Defendant's reproduction of the Photograph and display of the
3 Photograph constitutes willful copyright infringement. *Feist Publications, Inc. v.*
4 *Rural Telephone Service Co., Inc.*, 499 U.S. 340, 361 (1991).
5

6 42. Plaintiff is informed and believes and thereon alleges that the
7 Defendant willfully infringed upon Plaintiff's copyrighted Photograph in violation
8 of Title 17 of the U.S. Code, in that they used, published, communicated, posted,
9 publicized, and otherwise held out to the public for commercial benefit, the
10 original and unique Photograph of the Plaintiff without Plaintiff's consent or
11 authority, by using them in the infringing articles on the Website.
12

13 43. As a result of Defendant's violations of Title 17 of the U.S. Code,
14 Plaintiff is entitled to any an award of actual damages and disgorgement of all of
15 Defendant's profits attributable to the infringements as provided by 17 U.S.C. §
16 504 in an amount to be proven or, in the alternative, at Plaintiff's election, an
17 award for statutory damages against the Defendant for each infringement pursuant
18 to 17 U.S.C. § 504(c).
19

20 44. As a result of the Defendant's violations of Title 17 of the U.S. Code,
21 the court in its discretion may allow the recovery of full costs as well as reasonable
22 attorney's fees and costs pursuant to 17 U.S.C. § 505 from Defendant.
23

24 45. As a result of Defendant's violations of Title 17 of the U.S. Code,
25
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1 Plaintiff is entitled to injunctive relief to prevent or restrain infringement of his
2 copyright pursuant to 17 U.S.C. § 502.
3

4 **JURY DEMAND**

5 46. Plaintiff hereby demands a trial of this action by jury.
6

7 **PRAYER FOR RELIEF**

8 **WHEREFORE** Plaintiff respectfully requests judgment as follows:

9 That the Court enters a judgment finding that Defendant has infringed on
10 Plaintiff's rights to the Photograph in violation of 17 U.S.C. §501 et seq. and
11 award damages and monetary relief as follows:
12

- 13 a. finding that Defendant infringed Plaintiff's copyright interest
14 in the Photograph by copying and displaying without a license
15 or consent;
16
17 b. for an award of actual damages and disgorgement of all of
18 Defendant's profits attributable to the infringements as
19 provided by 17 U.S.C. § 504 in an amount to be proven or, in
20 the alternative, at Plaintiff's election, an award for statutory
21 damages against the Defendant for the infringement pursuant
22 to 17 U.S.C. § 504(c), whichever is larger;
23
24 c. for an order pursuant to 17 U.S.C. § 502(a) enjoining
25 Defendant from any infringing use of any of Plaintiff's works;
26
27
28

- d. for costs of litigation and reasonable attorney's fees against Defendant pursuant to 17 U.S.C. § 505;
- e. for pre judgment interest as permitted by law; and
- f. for any other relief the Court deems just and proper.

DATED: February 14, 2023

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